LIM ENG KOOI v. PUBLIC PROSECUTOR.

[C. A. (Willan C.J., Spenser Wilkinson and Briggs JJ.) October 2, 1948]

[K. L. — F.M. Criminal Appeal No. 91 of 1948]

Fire-arms and Ammunition — Carrying of Arms Ordinance, 1947, ss. 2 and 3 — Definition of arms — Unserviceable revolver.

The appellant in this case was convicted under s. 3 of the Carrying of Arms Ordinance 1947 for carrying a Verey pistol. On appeal it was contended that the Verey pistol did not come within the definition of "arms" as it was unserviceable and could not be fired.

Held: (1) the question of whether an article comes within the definition of "arms" as defined in s. 2 of the Carrying of Arms Ordinance, 1947, is a question of fact which has to be decided in each individual case; (2) in this case the Verey pistol needed only to be cleaned to be capable of being fired and it therefore came within the definition of "arms".

Cases referred to:—

(1) *Read v. Donovan* (1948) 1 All E.R. 37.

(2) *Cafferata v. Wilson* (1947) 3 All E.R. 149.

CRIMINAL APPEAL.

R. H. Legge for the appellant.

E. N. Griffith Jones (D. P. P.) for the respondent.

The Judgment of the Court was delivered by :—

Willan C.J. : — The appellant, in this case, was convicted under section 3 of the Carrying of Arms Ordinance, 1947, and sentenced to eight years rigorous imprisonment for carrying arms. He was carrying a Verey pistol, and there is no dispute that he was in fact carrying it. It is contended, however, on behalf of the appellant, that this Verey pistol does not come within the definition of the expression "arms" as defined in section 2 of the Ordinance, because at the material time when the appellant was found carrying it, it was unserviceable.

The condition of this Verey pistol at that material time is described in the evidence of Mr. Stafford, Officer in charge of Detectives, and the Police Armourer. The former said :—

> It is a Verey signal pistol. It was unloaded. American and of a pattern used by the British Army for signalling in the field. Rusted but quite serviceable. No component part missing . . . could not have been fired at that time because of rust on trigger . . . . it could have fired a cartridge the size of which is one inch in diameter. The explosive is comprised mainly of phosphorus which is ignited when fired and burning with a fierce coloured flame. I think at short range it would kill.

The latter said :—

> 18th May last I was handed this pistol (P1) for examination and cleaning by last witness i.e. Mr. Stafford, I cleaned it and handed it back to him. Not capable of discharging a bullet. It discharges flames, used for signalling. A person could be injured at 3 yards. It could kill a person if he was near.

The definition of "arms" in section 2 of the Carrying of Arms Ordinance, 1947, reads as follows :—

> 'Arms' includes any firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol, from which any shot, bullet or other missile can be discharged or noxious liquid, flame or fumes can be emitted, and includes any bomb or grenade.

It has been held in England in the case of *Read v. Donovan*[1] that a double-barrelled signal pistol firing a cartridge with explosive ballistite and containing a phosphorus and magnesium flare with a small propelling charge, not designed as a weapon, but capable of being used as such with fatal results is a "lethal weapon of any description from which any shot, bullet or missile can be discharged" within the meaning of the definition of the expression "fire-arms" in the Fire-arms Act, 1937. We have no hesitation in deciding that a Verey pistol, capable of being fired, similarly comes generally within the definition of the expression "arms" in our local Ordinance. But, Mr. Legge, for the appellant, relied on the particular words in the definition of "arms" in our local Ordinance "from which any shot, bullet or other missile can be discharged", and contended that at the material time when the appellant was found to be carrying this Verey pistol, from the evidence of both Mr. Stafford and the Police Armourer, it was not capable of being fired. Accordingly, Mr. Legge submitted the appellant should not have been convicted.

The question whether an article comes within the definition of "arms" as defined in section 2 of the Carrying of Arms Ordinance, 1947, must be a question of fact to be decided in each individual case. For example, at the time a person is found carrying arms the particular arm may have the safety catch in the "safe" position or, in the case of an automatic weapon, it might have jammed temporarily. In either of such examples it could not be held that the weapon in question was not one from which "any shot, bullet or other missile can be discharged".

It is impossible for us to cover all possible contingencies, but two sets of circumstances readily come to our minds :—

(a) Where an arm is not capable of being fired because, as in this case, it is in a rusty condition.

(b) Where an arm is not capable of being fired until a part has been added to it, or a part of it adapted, in some way or other.

In either case it must be a matter of degree i.e. how much has to be done to the arm, either by way of cleaning, where it is rusty, or how much has to be done by way of additions to it, or adaptations of it, where mechanical repairs or alterations are required. This, as we have already stated, must be a question of fact in each individual case, and no formula can be devised to cover all possible sets of circumstances.

We are fortified in this view by the case of *Cafferata v. Wilson*[2]. The decision in that case turned on the definition of the expression "fire-arm" in section 12 (1) of the Fire-arms Act, 1920, in England, which reads as follows :—

> The expression 'firearm' means any lethal firearm or other weapon of any description from which any shot, bullet, or other missile can be discharged, or any part thereof . . . .

Omitting the last four words thereof, that definition is substantially the same as the definition of "arm" in our local Ordinance.

In that English case the facts were that a person, who was registered as a fire-arms dealer, sold a dummy revolver, which was similar in appearance to an ordinary revolver, but was fitted with a barrel and cartridge chambers only partially bored. There was a venthole in the barrel for the escape of gases. It was incapable, as sold, of discharging a missile, but by drilling it could be converted into a weapon capable of killing a man at a distance of 5 feet.

The appellant in that case was convicted by the Magistrate and he appealed against his conviction. On the appeal Lord Hewart L.C.J., in delivering the judgment of the Court, held that the definition in the Act included every instrument that could easily be adapted for use as a fire-arm. In addition the Lord Chief Justice, at page 150 of the report, said :—

> It seems to make no difference that the decisive part was not to be an addition but an adaptation of what was already there.

In the case before us the evidence is that the Police Armourer, to whom the particular Verey pistol was handed on the 18th of May, 1948, for cleaning to make it serviceable, handed it back to Mr. Stafford on the 19th of May, 1948, in a serviceable condition, and therefore a comparatively minor operation had to be performed on it to make it capable of being fired. Accordingly, on those facts, we hold that this Verey pistol comes within the definition of the expression "arm" as defined in section 2 of the Carrying of Arms Ordinance, 1947, and so the appellant was rightly convicted. Hence this appeal is dismissed.

Appeal dismissed.

TAN YIAN HAN & ANOR. v. ANG CHAN SIONG & ANOR.

[O. C. J. (Gordon-Smith Ag. C.J.) October 6, 1948]

[Singapore — Civil Suit No. 340 of 1948]

Landlord and Tenant — Interpretation Ordinance, s. 5(d) — Effect of repeal of Ordinance — Increase of Rent (Restriction) Ordinance 1939 — Control of Rent Ordinance, 1947 — Position of subtenants.

In this case the plaintiffs, who were sub-tenants of premises No. 6 Telok Ayer Street, claimed a declaration that an order of the District Court made in a District Court Summons between the landlord and the tenant of the said premises, was not enforceable against them. A special case under R.S.C. Order 33 was filed and it was argued for the plaintiffs that as the judgment in the District Court was given after the repeal of the Increase of Rent (Restriction) Ordinance, the District Court had no jurisdiction and alternatively that the plaintiffs were protected under s. 15 of the Control of Rent Ordinance 1947.

Held: the repeal of the Increase of Rent (Restriction) Ordinance did not affect any right acquired by the landlord under that Ordinance and s. 15 of the Control of Rent Ordinance had no application in this case.

CIVIL SUIT.

N. A. Mallal for the plaintiffs.

Dennis Murphy for the defendants.

Gordon-Smith Ag. C.J. : —This suit was commenced by Writ of Summons dated the 18th June 1948, the endorsement claiming a declaration that the plaintiffs, then in occupation of part of the premises No. 6 Telok Ayer Street as the sub-tenants of a chief tenant, one H. Mohamed Salleh who was not prohibited by the terms of his tenancy from sub-letting, that accordingly an order of the District Court dated 8th October 1947 in District Court Summons 362/47 in which the 1st defendant was the plaintiff and the said H. Mohamed Salleh was the defendant, was not enforceable against the present plaintiffs. An injunction was also prayed which was subsequently granted and extended until the hearing of this action, which took place on the 29th September.

A special case under Order 33 has been filed together with agreed facts, the issues being as to whether section 15 of the Rent Control Ordinance No. 35 of 1939 (as amended by Ordinance No. 30 of 1941) applies and whether the judgment obtained in the District Court is enforceable against the plaintiffs.

The agreed facts are set out at length but can be more briefly summarised as follows :—

(1) Prior to 1941 trustees (the 2nd plaintiff being one) owned and were in possession of No. 6 Telok Ayer Street which was sold by them in July 1941 to Ang Khye Pang, the trustees remaining in occupation thereof until 15th February 1942, after which date one P. Habib Maricar, with the consent of the owner Ang Khye Pang, became the chief tenant. The 2nd plaintiff continued to live there as the sub-tenant of